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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1591/2015**

RAM NARAIN

..... Plaintiff

Through Mr.Ankit Jain with Mr.Ankit
Gupta, Advocates.

versus

MAHAVIR SINGH & OTHERS

..... Defendants

Through Ex parte

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Date of Decision: 11th January, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (ORAL)

I.A.No.442/2018

1. Present application has been filed under Order XII Rule 6 read with Section 151 CPC on behalf of the plaintiff.
2. On the last date of hearing i.e. 05th December, 2017, as none was present for the defendants, they were proceeded *ex parte*.

Consequently, no notice is required in the present application and the same is taken up for hearing.

3. Present suit has been filed for declaration and permanent injunction. The prayer clause in the present suit is reproduced hereinbelow:-

(a) a decree for declaration declaring the plaintiff as exclusive owner of the portion shown in Red Colour in the Site Plan attached, i.e., Rear portion of the property bearing No.A-3, Naraina Vihar, New Delhi – 110028 by virtue of family settlement between the plaintiff and Late Sh. Rai Singh the predecessor-in-interest of the Defendants.

(b) a decree for permanent injunction restraining the Defendants, their agents and servants from stopping/interfering in the right of the plaintiff to construct boundary wall on his portion of the property fully shown in Red Dotted Line in the site plan in property No.A-3, Naraina Vihar, New Delhi-110028.

(c) Cost of the suit may also be awarded in favour of the Plaintiff and against the Defendants.

Any other Order as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case may also be passed in favour of the Plaintiff and against the Defendants."

4. It is pertinent to mention that the present suit has been filed on the basis of the allegation that the suit property was a joint property of the parties and the same was mutually partitioned by a Deed of Family Settlement dated 23rd September 1980 between the plaintiff and his deceased brother late Sh.Rai Singh.

5. The cause of action pleaded is that the defendants are not allowing the plaintiff to enclose the portion of the suit property which had fallen to his share as per the Family Settlement, as shown in red colour in the site plan.

6. The defendants, who are the nephews and nieces of the plaintiff, in paragraph 5 of their written statement have stated that the plaintiff is deliberately trying to construct a wall in a portion which falls in the share of the defendants. Para 5 of the written statement filed by defendant nos.1, 2(b) and 3 is reproduced hereinbelow:-

“5. That the plaintiff has not come to the Hon’ble Court with clean hands as matter of fact the present suit has been filed by the plaintiff for the partition of a property wherein both the plaintiff as well as defendants are the leasee of the DDA as the DDA had allotted the suit property in the name of the plaintiff, and father of the defendant no.1 and 3 and the grandfather of the defendant no.2-B namely Late Sh. Rai Singh and were allotted the House No.A-3, Naraina Vihar, New Delhi measuring 800 sq. yards by the DDA vide File No.F5(100) 71 and accordingly the Lease deed was executed by the DDA in the joint name of Sh. Ram Narayan and Rai Singh vide Registration no.2,616 Addl. Book No.1 Vol. no.1205 pages 149 to 159 dated 31.03.1970 and the possession of the same was handed over to the said Sh.Ram Narayan and Sh. Rai Singh by the DDA and the property still stands in the name of the allottee on lease basis and as per the lease deed the property cannot be parted by meets and bounds without the prior permission of the DDA.”

7. On 05th December, 2017 when the matter had come up for framing of issues, learned counsel for the plaintiff had stated that the plaintiff was not claiming an inch of land beyond the portion falling in his share.

8. The plaintiff along with the present application has enclosed an affidavit in which it is stated as under:-

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2. *That the deponent/plaintiff undertakes that the plaintiff, his heirs, successors will not encroach even an inch of land beyond the portion which had been allotted to the plaintiff in the family settlement between the plaintiff and Shri Rai Singh and that the wall will be raised by the plaintiff only on the basis of the eastern line to the wall of the defendants and not making any encroachment on the portion of the defendants as per plan.....”*

9. The Supreme Court in ***Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors., (2000) 7 SCC 120*** has held as under:-

“In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

10. Keeping in view the aforesaid mandate of law as well as the fact that the Family Settlement has not been denied by the defendants and the plaintiff is not claiming an inch of land beyond what has fallen to his share and also the fact that the defendants have been proceeded *ex parte*, this Court decrees the present suit in accordance with prayer (a)

and (b) of the plaint. Registry is directed to prepare a decree sheet accordingly.

The next date of hearing i.e. 08th February, 2018 stands cancelled.

MANMOHAN, J

JANUARY 11, 2018
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